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DATE: August 15, 2011

TO: All Dakota County Mandated Reporters

FROM: James C. Backstrom, Dakota County Attorney *JCB*

SUBJECT: **Mandatory and Voluntary Reports of Child Abuse
or Neglect Pursuant to Minn. Stat. § 626.556**

[This memorandum was previously issued in 2003. 2006 and 2008 is being re-issued with minor modifications.]

In 1975, the Minnesota Legislature enacted a statute mandating that certain people report the maltreatment of minors. The statute has been amended several times since it was originally enacted, but its purpose has not changed:

“The legislature hereby declares that the public policy of the state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse...

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.”

The persons who are mandated to report (“mandated reporters”) under the statute are those individuals who know or have reason to believe that a child is being neglected or physically or sexually abused, or has been neglected or physically or sexually abused within the preceding three years, if the person is a professional or a professional’s delegate engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement, or employed as member of the clergy and having received the information while engaged in ministerial duties, except that clergy need not report information that is subject to the clergy privilege under Minn. Stat. § 595.02, Subd. 1(c). In other words, the definition includes professional persons in the above-listed fields who regularly come into contact with families and children as part of their professional duties.

Many county employees are mandated reporters. These include: social workers and other professional staff in the Social Services Department; the County Sheriff, deputy county sheriffs, and other professional staff in the Sheriff’s Department; public health nurses and other professional staff in the Public Health Department; the County Attorney, assistant county attorneys, and other professional staff in the County Attorney’s Office; probation officers and other professional staff in the Community Corrections Department; child support officers and other professional staff in the Child Support Enforcement Program; and professional workers in the Employment & Economic Assistance Department. This list is not necessarily exhaustive, but it includes those whom we believe are clearly included within the definition.

A mandated reporter must report suspected incidents of neglect or abuse of a child, including **both** the **direct observations** of such abuse or neglect (e.g., personally seeing physical injury to a child) **indirect information** related to such neglect or abuse that comes to the mandated reporter's attention (i.e., a non-mandated reporter relaying information to a mandated reporter that they have observed physical abuse of a child).

The law requires a mandated reporter to immediately report (meaning within 24 hours) the neglect or physical or sexual abuse to the local welfare or social services agency, the agency responsible for assessing or investigating the report, the police department, or the county sheriff's department. The terms neglect, physical abuse, and sexual abuse are all defined in the statute. Neglect is the failure to provide for the child's basic or medical needs, including adequate supervision, or the failure to protect the child from harmful conditions. Neglect includes medical neglect and prenatal exposure to controlled substances for a non-medical purpose. Sexual abuse is the subjection of the child to conduct that corresponds to all levels of criminal sexual conduct as defined in criminal statutes and also includes violations of prostitution and pornography statutes. Physical abuse is a physical injury to the child that is non-accidental or that cannot be explained by the reported history of the injury. The abuse or neglect must be perpetrated by a "person responsible for the child's care", which includes, among others, parents, others in the family that provide care for the child, and others caring for the child in the community, such as teachers, day-care providers, babysitters, coaches, clergy or other persons who have assumed responsibility for a child's care, even if this is on a temporary or short-term basis.

Besides physical and sexual abuse that must be reported, threatened injury and mental injury must also be reported. Threatened injury means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Mental injury is an injury to the psychological capacity or emotional stability of the child as evidenced by observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

The initial report by a mandated reporter (which can be oral or written) must be followed within 72 hours (excluding weekends and holidays) by a written report, which must identify the child, any person believed to be responsible for the neglect or abuse, if known, the nature and extent of the abuse or neglect and the name and address of the person reporting. The name of the reporter is confidential, and can only be disclosed with the consent of the reporter or if a court finds that the report was false and that the report was made in bad faith.

The statute provides that a mandated reporter who knows or has reason to believe that a child is being neglected or physically or sexually abused, or has been neglected or abused within the past three years, and fails to report, is guilty of a misdemeanor. A mandated reporter who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused by the same perpetrator within the preceding ten years, and fails to report, is guilty of a gross misdemeanor.

The law also has a provision for **immunity from civil and criminal liability for making a voluntary or mandated report** if the reporter acts in good faith. In other words, filing a truthful report based upon observations or information obtained from others will not expose the reporter to civil liability or criminal charges, even if it is later determined that no abuse had occurred.

The statute is unclear whether a mandated reporter is required to report only when the information is received in the course of the mandated reporter's official duties and while actually on duty. Several other states define mandated reporters by job function and require reporting by such individuals at all times, on duty or off. Minnesota's law does not do so. While we have concluded that current Minnesota law does not

require mandatory reports outside of “on-duty” situations, **we strongly recommend that any county-employed mandatory reporter report any information they obtain concerning child abuse or neglect regardless of whether this information is obtained while on or off duty.** Reports of neglect or abuse observed by a mandatory reporter who is “off duty” are considered voluntary reports.

Even if a person does not meet the definition of mandated reporter, all county employees can be voluntary reporters and are strongly encouraged to make voluntary reports whenever they have information that a child is being or has been neglected or physically or sexually abused, or threatened with abuse. As noted above, mandated reporting responsibilities apply to any neglect or abuse which has occurred within the last 3 years. Even if the abuse occurred some time ago, a voluntary report is encouraged as this may prevent further injury or harm to the child or other siblings. The same immunity applies whether a reporter makes a mandated or voluntary report, provided the report is made in good faith, i.e. that the report is not knowingly false. It is important to remember that the **purpose behind the mandatory reporting law is to protect children. Voluntary reports further this same purpose.** Without these reports, there is no opportunity for law enforcement and child protection to investigate the situation and intervene to protect children when this is necessary.

The following examples are situations which **require reports by a mandatory reporter (or for which voluntary reports are encouraged):**

- A child support worker is talking to a person about his or her child support obligation prior to a court hearing on the matter, when the person complains about having to pay child support and reports that the other parent spends all the support money on gambling. The person goes on to say that the child does not have adequate food, clothing, or supervision while the other parent is off at the casinos. These facts should be reported to the child protection division of social services or to the police department where the child is allegedly being neglected.
- A similar situation with a similar obligation to report would occur if the complaining person states that the other parent spends all of the support money on drugs, and the child has been reporting the use of drugs by the other parent in front of the child.
- Another situation calling for a mandated report is one where the parent receiving child support is requesting that the parent who should be paying support not be required to do so because the other person will beat or assault the parent-recipient and the child for having to pay support. The threatened injury in this case calls for a mandated report by the support worker receiving the information.
- Another example of a county employee who must report is an adult services social worker or a public health nurse who is meeting with a client and observes a child with bruises. The bruises appear to be other than the kind that a child might receive in ordinary play or day-to-day living. The parent’s explanation of the bruises does not fit with their location or appearance. The county employee is mandated to make a child protection report in such a situation.

A situation not requiring a mandated report, but where a voluntary report is important, occurs when a paternity worker is speaking with a minor mother to pursue a paternity case against the father. The worker learns that the date of conception occurred before the mother’s 16th birthday and that the father is at least two years older than the minor mother. These facts establish the crime of criminal sexual conduct in the third degree, for which the father could be charged. This is not a situation requiring a mandatory report because

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the boyfriend/father was not a person responsible for the girl's care at the time of conception (unless the older boy had been designated by the girl's parent as the girl's babysitter).

The above list of examples is illustrative only. Obviously, it is not possible to provide examples of every situation where a mandatory report is required (or a voluntary report is encouraged).

Child protection agencies and law enforcement agencies have the duty to cross report to one another incidents of reported child abuse or neglect. Such cross reporting is not optional but is required in all circumstances. Mandated reporters do not need to report to both agencies.

If there are questions as to whether you are a mandatory reporter or whether a report is mandated or could be made as a voluntary report, they can be answered by calling Dakota County Child Protection Intake Screening at 952-891-7459. If you have any legal questions concerning your obligation or ability to report, you may contact Assistant Dakota County Attorneys Don Bruce, Peggy Horsch or Karen Schaffer at 651-438-4438. Also, each year in November Dakota County Social Services and this Office provides training concerning mandatory reporters and their responsibilities. We strongly encourage all mandated reporters in Dakota County to attend this training every 3-5 years to stay current on these important responsibilities.

c: Dakota County Sheriff
Dakota County Police Chiefs